

REMARKS

Claims 1, 2 and 6 are pending in the present application, and are rejected. Claim 1 is herein amended. No new matter has been presented.

Claim Rejections - 35 U.S.C. §112

Claims 1, 2 and 6 are rejected under 35 U.S.C. §112, first paragraph, as containing subject matter that was not described in the specification.

The Examiner notes that claims 1, 2 and 6 were amended to recite that each of the separate incubation spaces within the incubator housing includes a door for opening and closing entry into each of the incubation spaces. The Examiner asserts that the originally filed specification fails to provide support for this claim limitation.

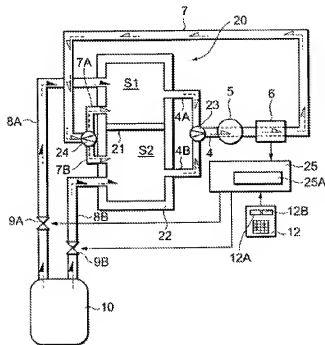
The Examiner asserts that the originally filed disclosure only provides support for a single door that blocks the opening of the incubator housing wherein the opening includes the two separate incubation spaces. The Examiner asserts that this new claim limitation was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Applicant respectfully disagrees with this rejection for the following reasons.

The claim limitation is “a housing having an interior divided into at least two separate incubation spaces by a partition and a respective door for opening and closing entry into each of said incubation spaces”. According to the claim language, the door(s) must be in the housing.

Fig. 2 of the present specification is as follows:

FIG. 2



As noted in Fig. 2, separate incubation spaces S1 and S2 are fed by separate supply lines 8A and 8B. Applicant first submits that there is no place that a *single* door (as asserted by the Examiner) could be placed *in the housing* (as required by the claim) for opening and closing entry into both of the separate incubation spaces.

Applicant notes that that in the rejection of claim 6 in the present office action, the Examiner asserts that although claim 6 does not recite a separate door for each space, claim 1 still recites "a respective door" for opening and closing entry into each of the incubation spaces. Thus, the Examiner is admitting that claim 1 essentially requires a door for each incubation space.

Applicant further notes the following descriptions in the specification:

[0021] According to the third aspect of the present invention, a plurality of incubation spaces are disposed and the control means selects the gas in any incubation space, detects the CO₂ gas concentration of the selected gas by the CO₂ gas concentration detection means, and controls the supply of the CO₂ gas to each incubation space in accordance with the detected CO₂ gas concentration in the first aspect or the second aspect of the present invention. Therefore, the CO₂ gas concentration can be controlled *for each incubation space*. (Emphasis added.)

Furthermore, the specification on page 12, lines 10-25 indicates that:

[0042] In the case of the CO₂ incubator 20 of this embodiment, a body 22 is constituted of an adiabatic housing having an opening (not illustrated) on one face the same as the case of the above embodiment. Moreover, a partition wall 22 is formed in the inside (storeroom) of the body 22 and incubation spaces 1S and 2S divided by the partition wall 21 are also formed. Furthermore, the body 22 is provided with a not-illustrated door for blocking the incubation spaces 1S and 2S *respectively* so that the opening can be opened or closed. (Emphasis added.)

Thus, Applicant disagrees with the new matter rejection because there is no logical way to control the CO₂ gas concentration in each incubation space with a single door, and further submits that the term “respectively” in paragraph [0042] supports the argument that separate doors are required. Applicant concludes that only a separate door for each incubation space could accomplish the stated effect of the invention.

Claim Rejections - 35 U.S.C. §103(a)

Claims 1, 2 and 6 are rejected under 35 U.S.C. §103(a) as being unpatentable over Swan et al. (USP 5,090,617) as evidence by Phillips et al. (IEEE Transactions) or Wheeler et al. (IEEE) and taken further in view of Kobayashi et al. (JP 63-108262) alone or alternatively

further in view of Dutton et al. (USP 4,701,415) and taken further in view of Cremonese (USP 4,839,282); Stout (USP 3,464,388) and Fazler et al. (DE 10017192).

The Examiner asserts that claim 1 differs from Swan et al. only by reciting that the incubator includes an air agitating blower and an air sampling loop communicated with the incubation space that includes the carbon dioxide gas concentration detection means and a pump for flowing gas through the sampling loop.

The Examiner further asserts that claims 1 and 6 further differ by reciting that the incubator includes a plurality of incubation spaces which can be independently controlled by the controller.

The Examiner concludes that it would have been obvious to provide the incubator device of the primary reference with an air sampling and agitating devices disclosed by the reference of Kobayashi et al. for the known and expected result of providing alternative means recognized in the art for sampling and mixing the air within an incubator space.

The Examiner further concludes that it would have been obvious to provide the incubator devices of the primary references with individual compartments for the known and expected result of allowing the temperature of each compartment to be maintained separately with respect to another compartment.

The Examiner further concludes that it would have been obvious to provide the separate openings of the modified primary reference with individual doors as suggested by the reference of Fazler et al. for the known result of protecting the contents of the spaces from the outside environment when accessing one of the spaces.

Claims 1, 2 and 6 are rejected under 35 U.S.C. §103(a) as being unpatentable over Vision Scientific (CO₂ Incubator Model VS-9108MS) as evidenced by Phillips et al. (IEEE Transactions) or Wheeler et al. (IEEE) and taken further in view of Kobayashi et al. (JP 63- 108262) alone or alternatively further in view of Dutton et al. (US 4,701,415) and taken further in view of Cremonese (US 4,839,292), Stout (US 3,4645,388) and Fazler et al. (DE 10017192).

The Examiner concludes that it would have been obvious to provide the incubator device of the primary reference with an air sampling and agitating devices disclosed by the reference of Kobayashi et al. for the known and expected result of providing alternative means recognized in the art for sampling and mixing the air within an incubator space.

Applicant herein amends the claims to clarify:

a CO₂ gas concentration detection means for separately detecting a CO₂ concentration in each of the plurality of incubation spaces;

a CO₂ gas concentration detection means for detecting a CO₂ concentration in each of the plurality of incubation spaces and CO₂ gas concentration setting means for separately setting a desired CO₂ gas concentration to be present in each of the incubation spaces; and wherein

the control means individually controls supply of CO₂ gas to each of the incubation spaces from the CO₂ gas supply means in accordance with the calculated supply time and stop time.

Thereafter, Applicant respectfully disagrees with the rejection, because at least these now-explicit limitations are neither taught nor suggested by the cited references, alone or in combination.

In view of the aforementioned amendments and accompanying remarks, Applicant submits that the claims, as herein amended, are in condition for allowance. Applicant requests such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact the undersigned attorney to arrange for an interview to expedite the disposition of this case.

If this paper is not timely, Applicant petitions for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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